SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 344

JOHN ARBULICH, JR.,

Petitioner,

vs.

THOMAS ARBULICH

REPLY BRIEF

I

It is most significant that respondent makes no effort to support the decision of the California Supreme Court on the basis of its *ratio decidendi* but instead attempts to resist review on a ground not embodied in a finding by any of the California courts which passed upon the case. The California Supreme Court said, in this connection, only that:

> "It may be noted that the first paragraph of article II *seemingly* treats only of citizens of the United States in Serbia (Yugoslavia) and Serbian (Yugoslav) subjects in the United States * * * and therefore is not here applicable." (Emphasis supplied)

The court did not consider whether its admittedly superficial reading of the treaty was correct as a matter of con-

struction because of its decision that the treaty, even assuming its applicability, was irrelevant since its "provisions do not establish the reciprocal rights ~~granted~~ required by the Probate Code." This decision that the treaty is subordinate to state law, which respondent does not even purport to justify, is, of course, what the California ruling will stand for if it is not subjected to review by this Court.

We feel it would be an undue imposition on the Court if we were to elaborate in this reply the considerations which we merely touched on in our principal brief concerning the correct interpretation of the treaty in the light of its consistent practical construction by both parties. We need only point out here that this question of construction has not in fact been passed upon heretofore and is clearly not the basis of the decisions below. That it certainly is not controlled by the explicitly reluctant decision of this Court in *Clark* v. *Allen* we have indicated in our principal brief.

II

Respondent asserts in his Point II(a) that the California Courts merely chose between conflicting evidence in refusing to give effect to the official opinions of the Yugoslav Ambassador, and presumably the Minister of Justice, relying on an excerpt from the opinion of the California Supreme Court. His Point II(b), however, quoting further excerpts from the opinion, itself demonstrates that the Court in the face of the interpretation by the qualified Yugoslav officials relied rather upon its own interpretation of the Yugoslav Constitution and Decrees and its own assumption that these would be paramount in Yugoslav law to the Yugoslav interpretation of its treaty obligations. This is exactly the type of error corrected by this Court in the *Pink* case (Petitioner's Brief, pps. 18-19).

As to respondent's Point II(c), we have pointed out that the attention of the California Courts was called to the

treaties of both the United States and Yugoslavia with their most favored nations (Petitioner's brief, pp. 8-9). That they were made the subjects of judicial notice rather than being introduced in evidence is, of course, irrelevant.

Finally, although we do not regard it as important, respondent is technically incorrect in stating that the Bretton Woods Agreement was mentioned for the first time in the petition for rehearing before the California Supreme Court, since it was adverted to in connection with the general discussion of the irrelevance of foreign exchange controls in petitioner's original brief before that Court (R., p. 167). What *is* important is that the Agreement was not stressed until the petition for rehearing solely because of the fact that it was impossible to anticipate that the California Supreme Court would ignore not only the consistent line of California decisions holding foreign exchange controls irrelevant in determining rights of inheritance but also the action of the legislature in repealing the only portion of the California Code which made the question even arguable. As was said in *Herndon* v. *Georgia,* 295 U. S. 440 at page 444:

> "There is no doubt that the federal claim was timely if the ruling of the state court could not have been anticipated and a petition for rehearing presented the first opportunity for raisng it."

Respectfully submitted,

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NOVEMBER 27, 1953.